



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Flatter of the Appeal of)
EUGENE J. AND MARY L. VARGO)

Appearances:

For Appellants: Eugene J. Vargo, in pro. per.

For Respondent: Kendall E. Kinyon
Michael E. Brownell
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Eugene J. and Mary L. Vargo against a proposed assessment of additional personal income tax and penalties in the total amount of, \$63,150.62 for the year 1977.

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For the year in issue, appellants filed a California personal income tax Form 540 disclosing no information regarding their income, deductions and credits. The spaces provided for the required information contained asterisks which reflected objections under the Fourth and Fifth Amendments of the United States Constitution. Respondent demanded that appellants file a return containing all information required by law, but they refused to do so. Under the circumstances, respondent estimated their income on the basis of reports to this board of gross receipts from appellants' natural food store, and issued a proposed assessment. Those gross receipts in 1977 amounted to \$374,119. Included in the proposed assessment were penalties for failure to file a return (Rev. & Tax. Code, § 18681); failure to file a return after notice and demand (Rev. & Tax. Code, § 18683); failure to pay estimated tax (Rev. & Tax. Code, § 18685.05); and negligence (Rev. & Tax. Code, § 18684). Appellants protested, but refused to file a valid return.

It is well settled that respondent's determination of additional tax, including the penalties involved in this appeal, are presumptively correct, and the burden is upon the taxpayer to prove them erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Donald W. Cook, Cal. St. Bd. of Equal., May 21, 1980; Appeal of Arthur J. Porth, Cal. St. Bd. of Equal., Jan. 9, 1979.) In support of their position, appellants have merely recited the tired list of statutory and constitutional objections to respondent's action. A wide variety of contentions, including those made by the appellants, were discussed at length in our opinion in the Appeals of Fred Dauberger, et al., decided on March 31, 1982. We incorporate that opinion by reference and reject the contentions made herein by the appellants on the basis of the Dauberger decision.

Although appellants complain about respondent using their 1977 gross receipts to compute their tax liability, they have refused to come forth with any information. In similar situations, the courts have stated that the responsible administrative body has great latitude in making determinations of liability, particularly where the taxpayer files no valid returns and refuses to cooperate in the ascertainment of his income. (Joseph F. Giddio, 54 T.C. 1530 (1970); George Lee Kindred, 79,457 P-H: Memo. T.C. (1979).) Under those circumstances, appellants have failed to show that respondent's estimates of their income were unreasonable

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or that there was error in the deficiency assessment based thereon. It also appears that the penalties were fully justified. Accordingly, respondent's action will be sustained in all respects.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Eugene J. and Mary L. Vargo against a proposed assessment of additional personal income tax and penalties in the total amount of \$63,150.62 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 29th day
of June , 1982, by the State Board of Equalization,
with Board Members Mr. Bennett, Mr. Dronenburg and
Mr. Nevins present.

William M. Bennett --, Chairman
Ernest J. Dronenburg, Jr., Member
Richard Nevins , Member
 , Member
 , Member